

# Table of Contents

## Volume 27

### PART I. HOT TOPICS

#### CHAPTER 1. HOT TOPICS IN SECURITIES LITIGATION

- § 1:1 Introduction
- § 1:2 Private Securities Litigation Reform Act—Major developments and issues
- § 1:3 Primary and secondary liability: *Stoneridge*, *Janus Capital*, and *Lorenzo*
- § 1:4 Recent Developments under the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”)
- § 1:5 *[Reserved]*
- § 1:6 401(k) plan fee litigation
- § 1:7 Recent developments in M&A litigation
- § 1:8 The impact of Rule 23(f) on class certification of securities class actions
- § 1:9 Strategic considerations in internal investigations
- § 1:10 *[Reserved]*
- § 1:11 Litigation against bank directors and officers by the Federal Deposit Insurance Corporation as receiver of closed banks
- § 1:12 Stockholder Appraisal Actions in the Delaware Court of Chancery

### PART II. OVERVIEW

#### CHAPTER 2. INTRODUCTION

- § 2:1 Scope of work
- § 2:2 Preparing complaint
- § 2:3 Responding to complaint
- § 2:4 Discovery
- § 2:5 Class certification and summary judgment
- § 2:6 Trial and settlement
- § 2:7 Arbitration

## **PART III. PREPARING COMPLAINT**

### **CHAPTER 3. CHECKLISTS AND FORMS FOR CAUSES OF ACTION**

#### **§ 3:1 Overview**

#### **A. GENERAL PLEADING REQUIREMENTS**

##### **§ 3:2 Introduction**

##### **§ 3:3 Pleading jurisdiction and venue**

##### **§ 3:4 Pleading compliance with statute of limitations**

##### **§ 3:5 Pleading fraud with particularity**

##### **§ 3:6 Pleading class action**

##### **§ 3:7 Pleading derivative action**

#### **B. FEDERAL CAUSES OF ACTION**

##### **§ 3:8 Introduction**

##### **§ 3:9 Definition of federal “security”**

#### **1. SECURITIES EXCHANGE ACT OF 1934**

##### **§ 3:10 Section 10b and Rule 10b-5**

##### **§ 3:11 Aiding and abetting liability under Rule 10b-5**

##### **§ 3:12 Section 9**

##### **§ 3:13 Section 14(a)**

##### **§ 3:14 Section 14(e)**

##### **§ 3:15 Section 16(b)**

##### **§ 3:16 Section 18**

##### **§ 3:17 Section 20 (control-person liability)**

##### **§ 3:18 Section 20A (insider trading)**

#### **2. SECURITIES ACT OF 1933**

##### **§ 3:19 Section 11**

##### **§ 3:20 Sections 5 and 12(a)(1)**

##### **§ 3:21 Section 12(a)(2)**

##### **§ 3:22 Section 17(a)**

##### **§ 3:23 Section 15 (control-person liability)**

#### **3. OTHER FEDERAL CLAIMS**

##### **§ 3:24 Respondeat superior liability**

##### **§ 3:25 Conspiracy liability**

##### **§ 3:26 RICO**

#### **C. STATE LAW CAUSES OF ACTION**

##### **§ 3:27 Introduction**

## TABLE OF CONTENTS

### 1. STATUTORY CAUSES OF ACTION

- § 3:28 State Securities Act—Failure to register
- § 3:29 Fraud
- § 3:30 Other statutory claims

### 2. COMMON-LAW CAUSES OF ACTION

- § 3:31 Common-law fraud
- § 3:32 Breach of fiduciary duty
- § 3:33 Negligence
- § 3:34 Punitive damages

### D. SAMPLE COMPLAINTS

- § 3:35 Introduction
- § 3:36 Fraud in sale of securities
- § 3:37 Fraud in open-market trading
- § 3:38 Fraud in proxy statements
- § 3:39 Broker-dealer cases
- § 3:40 Notice of a securities lawsuit
- § 3:41 Plaintiff's sworn certification

### E. SAMPLE MOTIONS FOR INTERIM CLASS LEADERSHIP

- § 3:42 Introduction
- § 3:43 Plaintiff's Motion for Appointment as Interim Lead Plaintiff
- § 3:44 Plaintiff's Brief in Support of its Motion for Appointment as Interim Lead Plaintiff
- § 3:45 Second Plaintiff's opposition and competing motion for appointment as interim lead plaintiff
- § 3:46 Third Plaintiff's Opposition and Competing Motion for Appointment as Interim Lead Plaintiff
- § 3:47 Plaintiff's Response to Competing Motions for Selection of Interim Lead Plaintiff

## PART IV. RESPONDING TO COMPLAINT

### CHAPTER 4. ANSWERS, COUNTERCLAIMS, CROSS-CLAIMS AND THIRD-PARTY CLAIMS

- § 4:1 Overview

#### A. GENERAL PLEADING REQUIREMENTS

- § 4:2 Introduction

- § 4:3 Answers
- § 4:4 Counterclaims
- § 4:5 Cross-claims
- § 4:6 Third-party claims

## **B. AFFIRMATIVE DEFENSES**

- § 4:7 Introduction
- § 4:8 Statutory defenses—Securities Act Section 11
- § 4:9 —Securities Act Sections 5 and 12(a)(1)
- § 4:10 —Securities Act Section 12(a)(2)
- § 4:11 —Securities Act Section 15 (control person)
- § 4:12 —Securities Exchange Act Section 18(a)
- § 4:13 —Securities Exchange Act Section 20 (control person)
- § 4:14 State law claims
- § 4:15 Nonstatutory defenses

## **C. SAMPLE PLEADINGS**

- § 4:16 Introduction
- § 4:17 Answer
- § 4:18 —Alternate example
- § 4:19 —Alternate example
- § 4:20 Answer and cross-claims
- § 4:21 —Alternate example
- § 4:22 Third-party complaint
- § 4:23 Combined answer, counterclaims, cross-claims and third-party complaint
- § 4:24 Reply to cross-claims
- § 4:25 —Alternate example
- § 4:26 Answer to third-party complaint
- § 4:27 —Alternate example

# **CHAPTER 5. MOTIONS IN LIEU OF ANSWER**

- § 5:1 Overview

## **A. GENERAL PLEADING REQUIREMENTS**

- § 5:2 Introduction
- § 5:3 Motions to dismiss
- § 5:4 Motions to transfer

## **B. SAMPLE MOTIONS**

- § 5:5 Introduction

### **1. MOTION TO DISMISS**

- § 5:6 Motion to dismiss

## TABLE OF CONTENTS

- § 5:7 Brief in support of motion to dismiss
- § 5:8 Brief in opposition
- § 5:9 Reply brief

## 2. MOTION TO TRANSFER FOR VENUE

- § 5:10 Notice of motion to transfer venue
- § 5:11 —Brief in support of motion to transfer venue
- § 5:12 —Brief in opposition
- § 5:13 Motion to strike certain exhibits to defendants' motion to dismiss
- § 5:14 Defendants' opposition to plaintiffs' motion to strike

# PART V. DISCOVERY

## CHAPTER 6. TAKING DISCOVERY

- § 6:1 Overview

### A. GENERAL PLEADING REQUIREMENTS

- § 6:2 Introduction
- § 6:3 Discovery meetings among counsel
- § 6:4 Mandatory disclosures
- § 6:5 Preliminary orders
- § 6:6 Interrogatories
- § 6:7 Requests for documents and statements
- § 6:8 Requests for admissions
- § 6:9 Depositions and subpoenas
- § 6:10 Other discovery devices
- § 6:11 Stipulations and scheduling orders

### B. DISCOVERY MOTIONS FORMS

- § 6:12 Introduction

#### 1. GENERALLY

- § 6:13 Notice of taking depositions
- § 6:14 Stipulated protective order
- § 6:15 —Alternate example
- § 6:16 Scheduling order

#### 2. DEFINITIONS AND INSTRUCTIONS FOR WRITTEN DISCOVERY

- § 6:17 Interrogatories
- § 6:18 —Alternate example
- § 6:19 Document requests

§ 6:20 —Alternate example

### 3. DISCOVERY DIRECTED TO PLAINTIFFS

§ 6:21 Interrogatories

§ 6:22 —Expert witnesses

§ 6:23 —Class action issues

§ 6:24 —Contention interrogatories

§ 6:25 Document requests

§ 6:26 —Class action issues

### 4. DISCOVERY DIRECTED TO SECURITIES ISSUERS AND CORPORATE DIRECTORS

§ 6:27 Interrogatories

§ 6:28 —Alternate example

§ 6:29 —Alternate example

§ 6:30 Document requests

§ 6:31 —Alternate example

§ 6:32 —Alternate example

### 5. DISCOVERY DIRECTED TO ACCOUNTANTS

§ 6:33 Interrogatories

§ 6:34 —Alternate example

§ 6:35 —Expert witnesses

§ 6:36 Document requests

§ 6:37 —Alternate example

§ 6:38 —Alternate example

### 6. DISCOVERY DIRECTED TO ATTORNEYS

§ 6:39 Interrogatories

§ 6:40 —Alternate example

§ 6:41 Document requests

§ 6:42 —Alternate example

§ 6:43 —Alternate example

### 7. DISCOVERY DIRECTED TO BROKER-DEALER

§ 6:44 Interrogatories

§ 6:45 —Alternate example

§ 6:46 Document requests

§ 6:47 —Alternate example

§ 6:48 —Alternate example

## **CHAPTER 7. SECURITIES LITIGATION DISCOVERY DISPUTES**

§ 7:1 Overview

TABLE OF CONTENTS

**A. GENERAL PLEADING REQUIREMENTS**

- § 7:2 Introduction
- § 7:3 Motions to compel discovery
- § 7:4 Motions to limit discovery

**B. DISCOVERY MOTION FORMS**

- § 7:5 Introduction

**1. MOTION TO COMPEL DISCOVERY**

- § 7:6 Notice of motion and motion, memorandum in support, affidavit and proposed order
- § 7:7 —Brief in opposition and affidavit
- § 7:8 — —Alternate motion papers in support
- § 7:9 — —Papers in opposition

**2. MOTION TO STAY DISCOVERY**

- § 7:10 Supporting brief
- § 7:11 —Brief in opposition

**PART VI. CLASS CERTIFICATION AND SUMMARY JUDGMENT**

**CHAPTER 8. CLASS CERTIFICATION**

- § 8:1 Overview

**A. GENERAL PLEADING REQUIREMENTS**

- § 8:2 Introduction
- § 8:3 Motion to certify and defendant's rebuttal opportunity
- § 8:4 Interlocutory review of class certification orders

**B. FORMS RELATING TO MOTIONS FOR CLASS CERTIFICATION**

- § 8:5 Introduction
- § 8:6 Plaintiffs' memorandum in support of motion
- § 8:7 —Defendants' memorandum in response to motion
- § 8:8 — —Plaintiffs' reply memorandum in support of motion
- § 8:9 Petition for interlocutory appeal
- § 8:10 Opposition to petition for interlocutory appeal
- § 8:11 Opt-Out Notice in a Rule 10b-5 Case
- § 8:12 Outline for Plaintiffs' Expert Report at Class Certification on Market Efficiency

## **Volume 27A**

### **CHAPTER 9. SUMMARY JUDGMENT**

§ 9:1 Overview

#### **A. GENERAL PLEADING REQUIREMENTS**

§ 9:2 Introduction

§ 9:3 Motion for summary judgment

#### **B. FORMS RELATING TO MOTIONS FOR SUMMARY JUDGMENT**

§ 9:4 Introduction

§ 9:5 Defendant's brief in support of motion

§ 9:6 —Plaintiff's brief in opposition to motion

§ 9:7 — —Defendant's reply brief

## **PART VII. TRIAL AND SETTLEMENT**

### **CHAPTER 10. TRIAL**

§ 10:1 Overview

#### **A. GENERAL PLEADING REQUIREMENTS**

§ 10:2 Introduction

§ 10:3 Trial forms in general

#### **B. TRIAL FORMS**

§ 10:4 Introduction

##### **1. PLAINTIFFS' FORMS**

§ 10:5 Statement of case

§ 10:6 Trial brief

§ 10:7 Proposed voir dire questions

§ 10:8 Witness list

§ 10:9 Exhibit list

§ 10:10 Requested jury instructions and verdict form

##### **2. DEFENDANTS' FORMS**

§ 10:11 Statement of case and trial brief

§ 10:12 Notice of motion and motion in limine with supporting memorandum

§ 10:13 —Proposed order

§ 10:14 Proposed voir dire questions



## TABLE OF CONTENTS

- § 10:15 Witness list
- § 10:16 Exhibit list
- § 10:17 Proposed jury instructions and verdict form

## CHAPTER 11. SETTLEMENT

- § 11:1 Overview

### A. GENERAL PLEADING REQUIREMENTS

- § 11:2 Introduction
- § 11:3 Settlement considerations

### B. SETTLEMENT FORMS

- § 11:4 Introduction
- § 11:5 Settlement agreement and release
- § 11:6 —Alternate example
- § 11:7 —Alternate example
- § 11:8 — —Exhibit A: Confession of judgment
- § 11:9 — —Exhibit B: Stipulation for dismissal with prejudice
- § 11:10 Class action cases—Stipulation of Settlement
- § 11:11 —Exhibit A: (Proposed) Preliminary Approval Order
- § 11:12 —Exhibit A-1: Notice of pendency and proposed settlement of class action
- § 11:13 —Exhibit A-2: Proof of claim and release
- § 11:14 —Exhibit A-3: Summary notice of pendency and proposed settlement of class action
- § 11:15 —Exhibit B: (Proposed) Judgment
- § 11:16 —Supplemental Agreement
- § 11:17 *[Deleted]*

## PART VIII. ARBITRATION

## CHAPTER 12. LEGAL CONSIDERATIONS AND PRACTICE DOCUMENTS

- § 12:1 Overview

### A. LEGAL AND PRACTICE CONSIDERATIONS

- § 12:2 Introduction
- § 12:3 Legal basis for compelling arbitration
- § 12:4 Commencing arbitration
- § 12:5 Discovery
- § 12:6 Conduct of hearing
- § 12:7 Punitive damages issues
- § 12:8 Appeal: modification or vacation of award

## **B. ARBITRATION FORMS**

- § 12:9 Introduction
- § 12:10 Motion to compel arbitration
- § 12:11 —Memorandum in opposition
- § 12:12 — —Reply memorandum
- § 12:13 Statement of claim
- § 12:14 —Joint answer of respondents
- § 12:15 Claimant's prehearing memorandum
- § 12:16 Respondents' prehearing memorandum
- § 12:17 Claimant's posthearing memorandum
- § 12:18 Respondents' posthearing memorandum

## **APPENDICES**

- APPENDIX 1. Securities Litigation Selected 28 U.S.C. Sections  
Selected Sections of Title 28, United States Code
- APPENDIX 2. Selected Sections of Securities Act of 1933, 15  
U.S.C. §§ 77a et seq.
- APPENDIX 3. Selected Sections of Securities Exchange Act of  
1934, 15 U.S.C. §§ 78a et seq.
- APPENDIX 4. Racketeer Influenced and Corrupt Organizations,  
18 U.S.C. §§ 1961 et seq.
- APPENDIX 5. Private Securities Litigation Reform Act of 1995
- APPENDIX 6. Securities Litigation Uniform Standards Act of  
1998
- APPENDIX 7. Selected SEC Rules
- APPENDIX 8. Uniform Securities Act (Last Revised or Amended  
in 2005)
- APPENDIX 9. Federal Arbitration Act, 9 U.S.C. §§ 1–15
- APPENDIX 10. FINRA Code of Arbitration Procedure for  
Customer Disputes
- APPENDIX 11. FINRA Code of Arbitration Procedure for Industry  
Disputes
- APPENDIX 12. American Arbitration Association Securities  
Arbitration Rules

**Table of Laws and Rules**

**Table of Cases**

**Index**